

§ 127A-110. Proceedings against third party injuring or killing organized militia personnel.

(a) The right of a member of the North Carolina National Guard, the State defense militia, or the naval militia to compensation and other benefits under G.S. 127A-108 shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the State, or "third party," to pay damages therefor. The respective rights and interests of the member under this Article, and the State, if any, in respect of the common-law cause of action against a third party and the damages recovered shall be as set forth in this section.

(b) The member or personal representative if the member be dead, shall have the exclusive right to proceed to enforce the liability of the third party by appropriate proceedings if the proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During this 12-month period, and at any time thereafter if summons is issued against the third party during the 12-month period, the member or personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of the injury or death, subject to the provisions of subsection (h) of this section.

(c) If settlement is not made and summons is not issued within the 12-month period described in subsection (b) of this section, then all rights of the member, or personal representative if the member be dead, against the third party shall pass by operation of the period fixed by the statute of limitations applicable to these rights and if the State has not settled with or instituted proceedings against the third party within this time, then all such rights shall revert to the member or personal representative 60 days before the expiration of the applicable statute of limitations.

(d) The person in whom the right to bring a proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by subsection (h) of this section. A proceeding so instituted by the person having the right shall be brought in the name of the member or personal representative and the State shall not be a necessary or proper party thereto. If the member or personal representative refuses to cooperate with the State by being the party plaintiff, then the action shall be brought in the name of the State and the member or personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of the injury or death shall not be admissible in evidence in any proceeding against the third party. If the third party defending the proceeding, by answer duly served on the State, sufficiently alleges that actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to the jury in the case as to whether actionable negligence of the State joined and concurred with the negligence of the third party in producing the injury or death. The State shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though it were a party although not named or joined as a party to the proceeding. The issue as to the State's negligence shall be the last of the issues submitted to the jury. If the verdict is that actionable negligence of the State did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the State would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the member or personal representative free of any claim by the State and the third party shall have no further right by way of contribution or otherwise against the

State, except any right which may exist by reason of an express contract of indemnity between the State and the third party, which was entered into prior to the injury to the member.

(f) (1) Any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of the injury or death shall be disbursed by order of the court for the following purposes and in the following order of priority:

- a. First to the payment of actual court costs taxed by judgment.
- b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and this fee shall not exceed one third of the amount obtained or recovered of the third party.
- c. Third to the reimbursement of the State for all benefits by way of compensation or medical treatment expense paid or to be paid by the State pursuant to G.S. 127A-108.
- d. Fourth to the payment of any amount remaining to the member or personal representative.

(2) The attorney fee paid under subdivision (1) of this subsection shall be paid by the member and the State in direct proportion to the amount each shall receive under sub-subdivisions (1)c. and d. of this subsection and shall be deducted from the payments when distribution is made.

(g) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of the party's interest under subsection (f) of this section upon any payment made by the third party by reason of the injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and the lien may be enforced against any person receiving the funds. Neither the member or personal representative nor the State shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both State and member or personal representative join therein; provided, that this sentence shall not apply if the State is made whole for all benefits paid or to be paid by the member or personal representative under this Chapter less attorney's fees as provided by subsection (f) of this section and the release to or agreement with the third party is executed by the member. The Attorney General shall have the right on behalf of the State to reduce by compromise its claim.

(h) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this Chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other. (1967, c. 1081, s. 1; 1975, c. 604, s. 2; 2011-195, s. 1(a); 2012-194, s. 26.)